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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,206	11/03/2003	Barton J. Milburn	FORE-105	4180
<div>7590 Ansel M. Schwartz Suite 304 201 N. Craig Street Pittsburgh, PA 15213</div>				
<div>10/10/2008</div>				
<div>EXAMINER NGUYEN, STEVEN H D</div>				
<div>ART UNIT 2419</div>				
<div>PAPER NUMBER</div>				
<div>MAIL DATE 10/10/2008</div>				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/700,206

Applicant(s)

MILBURN ET AL.

Examiner

Steven HD Nguyen

Art Unit

2419

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/10/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-13 rejected under 35 U.S.C. 103(a) as being unpatentable over Bakre (USP 6671276) in view of Shionozaki (USP 6496479).

As claims 1, 5 and 8-9 Barke discloses a method and switch comprising at least one fabric (Fig 4, Ref 9) for switching connections; at least one input mechanism (Fig 4, Ref 15 and 16) for receiving connections from the network; a plurality of output mechanisms (Fig 4, Ref 15-16) for sending connections to the network, with at least one of the output mechanisms non-modifiable (Fig 4, Ref 16); and a controller (Fig 3, Ref ATM plane) which dynamically modifies parameters for the connections of the fabric, the input mechanism, and the plurality of the output mechanisms except for the non-modifiable output mechanism based on a modify signal, the controller modifying the non-modifiable output mechanism by destroying the connections of the

non-modifiable output mechanism and then recreating the connections of the non-modifiable output mechanism subject to the modified parameters while the input mechanism, output mechanisms, fabric and connections are active and operating (See col. 16, lines 24-45, Ref 33 includes inter lis such ref 36 “bidirectional input/output mechanism” for inputting into switch 33 being the input mechanism and the intra LIS are adjusted to the modified QOS parameters and non-modifiable output connections are destroyed and the new connections are established before conveying traffic, See link 37 is “bidirectional input/output mechanism” output of switch 33 “non-modifiable output mechanism” when received modified QOS parameters, the virtual connection will be destroyed and a new one will be created, the the traffic will be migrated from the old one to new one). However, Bakre fails to disclose connections being PVx or SVx. In the same field of endeavor, Shionozaki discloses a method and system for establishing and releasing the connections for SVC and PVC (Col. 8, line 58 to col. 9, line 8).

Since, PVC and SVC are well known in the ATM art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for using PVC or SVC in the multicast session as disclosed by Shionozaki into the teaching of Barkre. the motivation would have been to reduce setup time after receiving a request for a new QOS.

As claims 2 and 7, Bakre implicitly discloses cells of a connection of the non-modifiable output mechanism that is modified are discarded after the connection is destroyed and until the connection is recreated (Col. 8, line 58 to col. 9, line 8).

As claims 3-4, Bakre discloses the input mechanism is an input netmod and the output mechanism is an output netmod (Fig 4, Ref 9).

As claim 6, Bakre discloses the recreating the connections within 50 milliseconds (Col. 8, line 58 to col. 9, line 8).

As claims 10-13, Bakre discloses parameters are associated with a specific QOS (quality of service) and modified parameters are a different QOS (Col. 8, line 58 to col. 9, line 8).

Response to Arguments

4. Applicant's arguments filed 6/10/2006 have been fully considered but they are not persuasive.

5. In response to page 11, the applicant states that Bakre does not disclose a controller which dynamically modifies parameters for the connections of the fabric, the input mechanism, and the plurality of the output mechanisms except for the non-modifiable output mechanism based on a modify signal, the controller modifying the non-modifiable output mechanism by destroying the connections of the non-modifiable output mechanism and then recreating the connections of the non-modifiable output mechanism subject to the modified parameters. In reply, Bakre discloses a switch including a controller for receiving a modified signal including the modified QOS parameters, the non-modifiable output such as output 37 of switch 33 "intra LIS" between the switch and host will be destroyed and established a new one based on the modified QOS parameters between the host and switch, See col. 16, 24-45 clearly discloses the controller modifying the non-modifiable output mechanism by destroying the connections of the non-modifiable output mechanism "destroying/removing/deleting the VCs" and then recreating the connections of the non-modifiable output mechanism subject to the modified parameters

“establishing the new VCs with modified QOS parameters”). So, Bakre clearly discloses a QOS of the connections between host and switch are dynamically changing QOS based on the request signal by destroying/removing/deleting the VCs and recreating/establishing the new VCs in order to change the QOS of the connections and the QOS of input/output 33 is bidirectional will be dynamically changed without destroying and recreating the VCs.

6. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

7. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bakre discloses the claimed invention in ATM network and Shionozaki discloses a method and system for using PVC and SVC in ATM network to establish a connection between the hosts with QOS. Therefore, it would have been obvious to one of ordinary skill in the art to

implement the teaching of Shionozaki such as PVC and SVC because PVC and SVC are well known and expected in the ATM networks.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571)272-3159. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jayanti Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven HD Nguyen/
Primary Examiner, Art Unit 2419